

Remarks

Applicant would like to thank the Examiner for determining that Applicant can re-instate the appeal in this application without payment of an additional fee.

Claims 1, 13, and 18 have been amended to further clarify the function of the on-off switch. That is, the on-off switch is not a sensor switch (as shown in Pacheco) but is a switch operated by the user of the device.

Claims 1, 13, and 18 have also been amended to require that there must be only a single sensor switch in the device. Multiple sensor switches that close when a golf ball strikes the device (as shown in Pacheco) are excluded from the scope of Applicant's claims.

Claims 1, 2, 4 to 6, 10 to 13, and 15 to 17 were rejected under 35 U.S.C. 103(a) as obvious over Lee in view of Pacheco and Wash. Applicant notes that this application was on appeal, but was withdrawn from appeal by the Examiner in order to cite a new reference, Wash. Applicant infers from the Examiner's action that the Examiner considers this application to be allowable over Lee and Pacheco, for otherwise it would not have been necessary to withdraw the application and cite another reference. Therefore, Applicant will not repeat the arguments made by Applicant his previous amendments and his Brief concerning Lee and Pacheco except to note that all of Applicant's independent claims (i.e., Claims 1, 13, and 18) have now been amended, as noted hereinabove, to further distinguish over these references.

Wash was cited to show an on-off switch. The Examiner argues, "It would have been obvious to one of ordinary skill in the art at the time the invention was

made to incorporate the teachings of Pacheco and Wash into the disclosed invention of Lee. One would be motivated to combine the teachings of Pacheco and Wash with the disclosed invention of Lee in order to, provide informational feedback to a golfer, increase a player's excitement when utilizing the golf practice device and prevent unintentional activation during transporting or storage of the golf practice device." Applicant has already given reasons why it would not be obvious to combine the teachings of Pacheco with Lee in his Brief and amendments and will not repeat those reasons again here.

As to Wash, the first two motivations given by the Examiner apply to Pacheco, not Wash, and only the third motivation, "prevent unintentional activation during transporting or storage," would be applicable to Wash. However, it makes no sense to put the on-off switch of Wash "into the disclosed invention of Lee" because Lee has no electronics or battery to turn off. Lee has only a bell on a tee and an on-off switch cannot turn that off. Moreover, neither Lee nor Pacheco gives any indication that the "unintentional activation during transportation or storage of the golf practice device" is a problem. Only Applicant has recognized that it is a problem and the Examiner may not use Applicant's teachings to reject Applicant's invention.

Only Pacheco discloses an electronic device in which an on-off switch could be used and the Examiner has not suggested that it would have been obvious to incorporate the on-off switch of Wash into Pacheco. Applicant notes that in Wash an "encoded infrared optical signal" (column 4, lines 46 to 47) is generated. The on-off switch 14 is required to turn off LED (light emitting diode)

20 and light signal 24, which would be on constantly, draining the batteries of Wash's device, if there was no on-off switch to turn them off. (See Wash's circuit diagram in Figure 13.) However, Lee has no batteries that could be drained. While Pacheco does have a battery 4, sound synthesizer 5 is the only load on battery 4 (see the circuit diagram of Figure 4) and that is on only when a golf ball depresses a pressure bar 3. When a golf ball no longer depresses a pressure bar 3, the circuit opens again and there is no load on battery 4. Thus, unlike Wash, in Pacheco there would be no constant drain on the battery if there was no on-off switch to turn off the load on it.

Applicant notes that golf is a game in which rules and etiquette are very important. The accidental activation of golf practice device during, for example, the swing of another golfer would be a gross violation of etiquette. Golfers are unlikely to buy or use a golf practice device that might accidentally activate during those circumstances and subject them to that embarrassment.

Furthermore, unlike many other games, not all audio signals are equivalent in golf. To a golfer, the peculiar sound of a ball rattling around as it falls into a cup is a sound like no other, and it brings joy to his heart. (See Applicant's Claim 5.) None of the references cited recognize the importance of that sound.

Claims 3, 18, and 20 to 22 were rejected under 35 U.S.C. 103(a) as obvious over Lee in view of Pacheco and Wash in further view of Irving. These references were discussed in Applicant's Brief, previous amendments, and hereinabove and Applicant will rely upon his comments there and not repeat

them again here.

Claims 9, 14, and 19 were objected to but would be allowable.

Applicant respectfully urges the Examiner to reconsider his position. All of the claims are believed to be allowable over the references cited and reconsideration and allowance of all of the claims are therefore requested.

Should the Examiner wish to discuss the application, he is invited to call Applicant's attorney at (716) 774-0091.

Respectfully,

A handwritten signature in black ink, appearing to read "Richard D. Fuerle", written in a cursive style.

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